

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED  
HARRISBURG, PA  
JUN 04 2002

MARY E. ANDREA, CLERK  
Per [Signature] Deputy Clerk

SHAWN JORDAN  
PLAINTIFF,

V.

ROBERT W. MEYERS,  
SUPERINTENDENT, ET AL.  
DEFENDENTS

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CIVIL NO. 1:00-CV-1387

Statement of Undisputed Facts

Pursuant to Rule 56.1 of the Court's Rules, the Plaintiff submits the following list of undisputed facts that entitle plaintiff to partial Summary Judgment on his claims of reckless disregard, an excessive and unreasonable risk to plaintiff health and safety.

1. Defendants responded to plaintiff civil complaint, it is admitted on May 20, 1994, the department of corrections issued a policy statement, effective August 22, 1994, subject: Smoking in Department of Corrections Building and Facility. (see: section G, Exhibit B1, No.7, section D, Exhibit Z,)

2. Defendants responded to plaintiff submitted Admissions, it is admitted plaintiff has a respiratory disease (Asthma) and uses an inhaler which he gets as part of his medical treatment. (see: section A, Exhibit F, No.B)

3. Defendants responded to plaintiff submitted admissions, it is admitted plaintiff given a steroid inhaler and a regular inhaler for his asthma. (see: section A, Exhibit S, No.2)

4. Defendants responded to plaintiff civil complaint, it is admitted plaintiff is incarcerated at S.C.I. Rockview and is currently housed on D-Block. (see: section G, Exhibit B1, No.3)

5. Defendants responded to plaintiff civil complaint, it is admitted on July 22, 2000, plaintiff wrote an Inmate Request to defendant D.Walls - Unit Manager. (see: section G, Exhibit B1, No.12)

6. Defendants responded to plaintiff civil complaint, it is admitted on July 22, 2000, plaintiff filed an Inmate Grievance No. ROC-0347-00, to Defendant Rackovan. Also, it is admitted that by August 24, 2000, a response was due from Defendant Lidgett. (See: section G, Exhibit B1, Pg. 3)

7. Defendants responded to plaintiff civil complaint, it is admitted on August 28, 2000, Defendant Rackovan responded to Grievance No. Roc-0347-00 (see: section G, Exhibit B1, pg. 4)

8. Defendants responded to plaintiff civil complaint, it is admitted on July 22, 2000, plaintiff wrote an Inmate request to defendant Wakefield seeking to be moved to another cell block. It is admitted defendant wakefield responded on July 24, 2000, that plaintiff could be moved if plaintiff had documented health concern. (see: section G, Exhibit B1, pg. 2)

9. Defendants responded to plaintiff civil complaint, it is admitted on July 22, 2000, plaintiff wrote an Inmate Request to defendant Meyers seeking, Inter alia, to be transferred to a non-smoking block. It is admitted Meyers responded on July 25, 2000, through Mr. Rackovan. It is admitted plaintiff was instructed to see his counselor and unit manager. (see: section G, Exhibit B1, Pg. 3)

10. Defendants failed to respond to plaintiff admissions, submitted on Jan. 22, 2002, therefor it is admitted, other Inmates has filed grievances about the window system on (D and A Housing Unit) over the past (10) Ten years. (See: section A, Exhibit R)

11. Defendants responded to plaintiff civil complaint, it is admitted that plaintiff submitted a appeal to the official Inmate Grievance Initial Review Response. (see: section G, Exhibit B1, pg. 4, No.17)

12. Defendants responded to plaintiff civil complaint, it is admitted Mr. Meyers responded to plaintiff's Appeal to Grievance stating the initial review response is sustained. (see: section G, Exhibit B1, Pg. 4, No.18)

13. Defendants responded to plaintiff civil complaint, it is admitted that plaintiff filed a appeal to final review to the Department of Corrections, Office of the Chief Hearing Examiner. (see: section G, Exhibit B1, Pg. 4, No.19)

14. Defendants responded to plaintiff civil complaint, it is admitted that defendant Robert S. Bitner Chief Hearing Examiner responed that upon completion of this review, it is the decision of this office to uphold the responses provided by staff at the institutional level. I fine the issues raised for final review have been addressed by the Grievance Coordinator and the superintendent, and their responses already provided at the institution level. Accordingly, your appeal to final review must be denied. (see: section G, Exhibit B1, No.20)

15. Defendant Rackavan responded to plaintiff submitted admissions and Defendants failed to responded to plaintiff admissions, submitted on 10/15/01, therefor it is admitted there are inmates on (D-Block) who are smokers and may or may not smoke on a daily bases. (see: section A, Exhibit M, No.1)

16. Defendant Rackovan responded to plaintiff submitted admission and Defendants failed to respond to plaintiff admissions, submitted on 10/15/01, therefor all defendants except defendant Rackovan, it is admitted that plaintiff made defendants aware of his respiratory disease (asthma) and secondhand smoke affect plaintiff asthma. (see: section A, Exhibit M, No.3)

17. Defendants responded to plaintiff submitted admissions, therefor it is admitted that the Ventilation/Exhaust system on (D and A Housing units do not use or have a filtration system. (see: section G, Exhitbit A1, pg. 2, No.4)

18. Defendants failed to respond to plaintiff admissions, submitted on 1/23/02, therefor it is admitted that the ventilation system has not been cleaned-out or replaced with a new system for the last 11 years or more. (see: section A, Exhibit L, No.4)

19. Defendants responded to plaintiff submitted admissions, it is admitted that filters are to be changed at regular intervals and where feasible, filtration system may be installed in authorized smoking areas. By way of further answer, there are no regulations which prescribe when filter must be changed or when filtration systems must be installed. (see: section G, Exhibit A1, Pg.2, No.2)

20. Defendants failed to respond to plaintiff admissions, filed on 1/23/02, therefor it is admitted, that Dust, Pollen, Tobacco Smoke, Animal Hair, Grass, are some of the particles to be build-up in the ventilation system in (D and A Housing Units. (see: section A, Exhibit L, No.2)

21. Defendants failed to respond to plaintiff admissions, dated 1/23/02 therefor it is admitted, that the ventilation system needs to be cleaned within every two years or less. (see: section A, Exhibit L, No.3)

22. Defendants failed to respond to plaintiff admissions, dated 1/23/02 therefor it is admitted that the ventilation system in the individual cells are inoperable, and has been for 11 years or more. (see: section A, Exhibit L, No.4)

23. Defendants failed to respond to plaintiff admissions, dated 1/22/02, therefor it is admitted, that the window systems in (D and A Housing Units need to be replaced with a new window systems. (see: section A, Exhibit R, No.1)

24. Defendants failed to respond to plaintiff admissions, dated 1/22/02, therefor it is admitted, that the window systems on (D and A) Housing Units has been in a non-working condition for (10) ten years or more. (see: section A, Exhibit R, No.2)

25. Defendants failed to respond to plaintiff admissions, dated 1/22/02, therefor it is admitted, the housing units (A and D) could no longer open and close the windows from the control center on the housing units, due to the poor condition they are in. (see: section A, Exhibit R, No.4)

26. Defendants failed to respond to plaintiff admissions, dated 1/22/02 therefor it is admitted the windows on (A and D) housing units are closed for nine (9) months out of a year. (see: section A, Exhibit R, No.6)

27. Defendants failed to respond to plaintiff admissions, dated 1/22/02, therefor it is admitted, the maintenace dept. has to open and close the windows on (D and A) housing units every year, due to the condition they are in. (see: section A, Exhibit R, NO.4)

28. Defendants responded to plaintiff admissions on 1/28/02, it is admitted, responsibility of those individuals receiving policies and procedures, as indicated in the (General Distribution) to ensure that each employee expected or requereired to perform the necessary procedures and duties, is issued a copy of the policy and procedures. (see: section G, Exhibit A1, No.1)

29. Defendants have admitted to the courts that, there are only TWO (2) Work-Order on file for the window systems, dated 4/5/00 and 5/8/00 for (D and A) Housing Unit; and only One (1) work-order for the ventilation system for (D) Housing Unit, dated 1/23/00 and there is none on file for (a) Housing Unit, nor any other Work-Orders on file for the Windows or ventilation system. (see: section A, Exhibit W, No.B)

30. Defendants failed to respond to plaintiff admissions, dated 5/8/02 therefor it is admitted, plaintiff was diagnose with asthma in 1994, it is admitted before 1994 plaintiff medical records do not show or state any clains of plaintiff being and/or having a re-spiratory disease (asthma). (see: Section A, Exhibit I, No. 1,2)

31. Defendants failed to respond to plaintiff admissions, dated 5/8/02 therefor it is admitted, plaintiff arrived at S.C.I. Rockview in 1991. (see: Section A, Exhibit T, No. 1)

6/8/02

Shawn Jordan  
Box-A-BI8942  
Bellefonte, Pa. 16823

